IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/12/2003

CORAM

THE HONOURABLE MR.JUSTICE R.JAYASIMHA BABU
AND
THE HONOURABLE MR.JUSTICE S.R.SINGHARAVELU

T.C.No.413 of 2000

The Commissioner of Income Tax,
Company Circle IV-I,
Madras. .. Appellant

-Vs-

M/s.Drilcos (India) Pvt.Ltd.,
Plot No.267, SIDCO Industrial Estate,
Ambattur,
Madras-98. .. Respondent

Tax Case (Appeal) under Section 260-A of the Income Tax Act, 1961 against the order dated 29-1-1999 in I.T.A.No.1558 (Mds.)/1997 (Assessment Year 1993-94), on the file of the Income Tax Appellate Tribunal, Madras Bench-"B".

!For appellant : Mr.T.Ravikumar, Jr.Standing Counsel for I.T.

^For respondent : Mr.J.Balachandran

:JUDGMENT

(Judgment of the Court was delivered by R.Jayasimha Babu,J.)
The assessee made a claim for deduction of a sum of Rs.17,49,889/-, which it had paid to its foreign collaborator in terms of agreement which had been entered into between parties on 7-6-1990. The payment was made during the previous year relevant to the assessment year 19 93-94. That payment was for the purpose of obtaining transfer of technical know-how which comprised of technical information, as also drawings and licence. The sum so paid was first of three instalments that was to be paid under the terms of that agreement.
2. Though the foreign collaborator sent some technical information, that collaborator subsequently did not supply the drawings and thereafter, reneged on the agreement. The assessee thereafter filed a suit against that collaborator, which was subsequently settled in a later assessment year, under which it received certain sums, which was about 60% of the amount that had been paid by the assessee.
3. The assessee's claim that the amount paid is deductionable as an

item of expenditure under Section 37 of the Income Tax Act, as in its view, it was a revenue expenditure, was accepted by the Tribunal, though such a plea has been rejected by the assessing authority and the appellate authority.
4. It is submitted for the Revenue that after the introduction of Section 35-AB in the Act, when the object for which expenditure incurred is know-how, the same is governed only by that Section, and deductions are allowable only in accordance therewith and it is not permissible to fall back on Section 37.
5. Learned counsel for the assessee submitted that in this case, though at the time of payment, it was intended by the parties that the assessee would receive know-how, subsequent events showed that know-how in fact was not made available to the assessee in the manner required, and consequently, no use could be made and was not made of the little information that was given.
6. This Court had occasion to consider Section 35-AB in the case of Commissioner of Income Tax vs. Tamil Nadu Chemical Products Ltd. (200 3 (Vol.259) I.T.R. 582). It was held therein that "irrespective of whether it is a capital or revenue expenditure", the expenditure incurred for the purpose of acquiring know-how was required to be treated only in accordance with Section 35-AB and the deduction that was allowable was one-sixth of the amount paid as lumpsum consideration for acquiring the know-how.
7. It was also observed in that case that "The time with reference to which the assessee's entitlement is to be judged is the previous year in which the payment was made and not the subsequent year in which the assessee's project was either abandoned or the know-how became useless by reason of the non-availability of other inputs required to make the project success."
8. The assessee in this case was clearly not entitled to have the amount paid by it to its collaborator for acquiring know-how as an item of revenue expenditure allowable as a deduction under Section 37. That payment was required to be considered only under Section 35-AB and the deduction that was allowable was one-sixth of the amount as provided in that Section.
9. The appeal is allowed.

Index: Yes
Internet: Yes

cs

To
1. The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan,
III Floor, Besant Nagar,
Madras-90. (with records) (5 copies)

2. The Secretary,
Central Board of Revenue,
New Delhi. (3 copies)

3. The Commissioner of Income Tax,
Company Circle IV-1,

Madras.

4. The Commissioner
of Income Tax (Appeals) IV,
Madras.

5. The Assistant Commissioner
of Income Tax,
Company Circle IV (1),
Madras.